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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/664,473	09/18/2000	Hugh Sharkey	17616-842	6257

7590 09/25/2002

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EXAMINER

SHAY, DAVID M

ART UNIT PAPER NUMBER

3739

DATE MAILED: 09/25/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

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UNITED STATES DEPARTMENT OF COMMERCE

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EXAMINER

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This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

OFFICE ACTION SUMMARY

☒ Responsive to communication(s) filed on August 8, 2002☐ This action is **FINAL**.☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

- ☒ Claim(s) 57-66 is/are pending in the application.
Of the above, claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 57-66 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
- ☐ received.
- ☐ received in Application No. (Series Code/Serial Number) _____.
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

- ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- ☒ Notice of Reference Cited, PTO-892.
- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Notice of Informal Patent Application, PTO-152

-SEE OFFICE ACTION ON THE FOLLOWING PAGES-

BEST AVAILABLE COPY

Art Unit: 3739

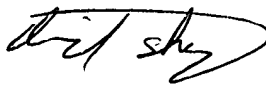
1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 57-66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sand ('709) in combination with Makower et al. Sand ('709) teaches a method such as claimed except the use of RF, use of painting strokes and use on patellar tendons per se. Makower et al teach the equivalence of RF energy and laser energy for heating tissue and deflecting the probe to reach a ^edesired to target tissue. It would have been *ob*vious to the artisan of ordinary skill to employ RF energy in the method of Sand ('709) since this is not critical and these are equivalent for tissue heating, as taught by Makower et al, to employ the method on patellar tendons, since Sand ('709) does not discuss avoiding these structures and to employ a painting motion, since this would allow a substantial length of the tendon to be treated all at once, and to deflect the probe, as taught by Makower et al, since Sand ('709) teaches no particular technique to *reach* ~~such~~ the internal tissues which are contemplated to be treated, and since this is not *cr*critical, thus producing a method such as claimed.

3. Applicant's arguments with respect to claims 57-66 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication should be directed to David Shay at telephone number ((703) 308-2215.


DAVID M. SHAY
PRIMARY EXAMINER
GROUP 330